



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8, MONTANA OFFICE**

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Ref: 8MO

January 14, 2013

Ms. Pamela Lee
Davis Graham and Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202

RE: FOIA EPA-R8-2014-001725

Dear Ms. Lee:

This is in response to your Freedom of Information Act (FOIA) request for restricted documents from the RCRA index. Attached electronically are documents 1069219, 1069246 and 1118050.

We are unable to provide you with the other documents you requested, which have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. § 552(b) (Exemption 5). An itemized list of withheld documents, along with the basis for their withholding, is provided on the enclosure to this letter.

Under the FOIA, you have the right to appeal this determination to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), E-mail: FOIA_HQ@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."



The billing for your request is also attached electronically. Following is a breakdown of costs:

| | | |
|-------------|---------------------|--------------|
| Search time | ½ hour @ \$28/hour | \$14.00 |
| Review time | 2 hours @ \$28/hour | <u>56.00</u> |
| Total | | \$70.00 |

If you have any questions regarding this response, please contact Chuck Figur at 303-312-6915 or Debbie Clevenger at 406-457-5004.

Sincerely,



Julie DalSoglio, Director
Montana Office

Attachment

AWP = Attorney Work Product
AC = Attorney Client Privilege
DP = Deliberative Process

| Doc ID | Doc Date | Title | Exemption 5 |
|---------|------------|--|-------------|
| 1059179 | 02-19-2004 | MEMORANDUM - JUSTIFICATION FOR PROPOSED SETTLEMENT OF CERTAIN CIVIL RCRA AND CWA CLAIMS AGAINST ASARCO, INC, INCLUDING LITIGATION RISK ANALYSIS | AWP, AC, DP |
| 1065590 | 11-28-2005 | E-MAILS RE:EAST HELENA RCRA & CERCLA OR RCRA? W/ ATTACHED MEETING NOTES ON AMERICAN CHEMET | AWP, AC |
| 1065849 | 10-12-2006 | E-MAIL RE: ASARCO RCRA/CERCLA OVERLAP DISCUSSION FOLLOW-UP ITEMS | AC,DP |
| 1066188 | 12-17-2007 | EXPERT REBUTTAL REPORT COMPENSABLE DAMAGES, EAST HELENA SITE, MT IN RE: ASARCO LLC BANKRUPTCY CASE NO. 05-21207 | AWP |
| 1066191 | 12-18-2007 | EXPERT REBUTTAL REPORT OF ANN MAEST, PHD ASARCO, LLC CHAPTER II BANKRUPTCY CASE NO. 05-21207 EAST HELENA, MT | AWP |
| 1068974 | 09-12-1996 | EAST HELENA RCRA REFERRAL - OECA'S PRELIMINARY THOUGHTS | AWP, AC, DP |
| 1069219 | 11-26-1996 | LETTER TRANSMITS LIST OF QUESTIONS THAT ASARCO HAS REGARDING EPA'S SLAG TEST; QUESTIONS INCLUDED | RELEASED |
| 1069222 | 12-05-1996 | ASARCO'S SLAG ISSUES | AC, DP |
| 1069229 | 12-17-1996 | E-MAIL: ASARCO SLAG QUESTIONS - REPLY | AC, DP |
| 1069246 | 09-01-1998 | MEMORANDUM OF LAW: RCRA USE, REUSE & RECLAMATION | RELEASED |
| 1069491 | 01-14-1997 | ASARCO SLAG TESTING ISSUES; SUMMARY OF THE MAJOR POINTS DISCUSSED ON THE 1/14/97 CONFERENCE CALL | AC, DP |
| 1069525 | 01-01-1111 | PROPOSED ALTERNATIVE APPROACH TO SLAG ANALYSIS FOR RCRA COMPLIANCE AT THE ASARCO EAST HELENA SMELTER; WITH MARGINALIA | DP |
| 1073242 | 04-14-2006 | CD: TDD 0801-3002-024 E. HELENA ZINC PLANT PRP REPORT APRIL 14 2006 | AWP |
| 1075128 | 03-13-1997 | Partial Research for Asarco East Helena Process Waste Water Beville History | AWP |
| 1118050 | 10-10-2007 | Expert Report of Robert Powell PhD PE and Environ International Corporation on Behalf of Asarco Inc.; Bankruptcy Case No. 05-21207 (Estimate of Environmental Liabilities) | RELEASED |